IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.409 of 2006

Sinhgad Technical Education Society .. Appellant

versus

The State of Maharashtra & Ors. .. Respondents

...

Mr.Y.R. Naik for the appellant.

Mr.A.R. Patil, AGP for respondent nos.1 and 3.

Mr.D.A. Dubey with Mr.Y.R. Mishra i/b G.C. Mishra for Union of India.

CORAM : D.G. KARNIK, J

DATED : 3rd October 2006

P.C.:

1. Heard learned counsel for the parties.

2. This appeal is directed against the order dated 29th April 2006 passed by Civil Judge, Senior

Division, Pune rejecting the appellant's application for injunction in Special Civil Suit no.529 of 2005.

3. The appellant filed a suit, bearing Special Civil Suit No.529 of 2005, against the respondents for a declaration that it was the owner of the suit land and for further declaration that the order dated 21st may 2004 passed by respondent no.3, the Asstt. Conservative of Forest, was illegal, ultra virus and void. It further claimed an injunction restraining the respondents from disturbing its possession of the suit land. In the suit, the appellant made an application for interim injunction restraining the respondents from disturbing its possession of the suit land. By the order dated 29th April 2006, the learned Civil Judge, Senior Division, rejected the application. That order is impugned in this appeal.

4. Learned AGP for the respondents submitted that appellant was not the owner of the suit land. The suit land is a private forest and by reason of section 3 of the Maharashtra Private Forests (Acquisition) Act, 1974 (for short "the Maharashtra Forest Act") the suit land stands vested in the state. Learned AGP produced for my inspection the original

register maintained regarding the issuance of notices under section 35(3) of the Indian Forest Act, 1976. He submitted that under sub-clause (iii) of clause (f) of section 2 of Maharashtra Forest Act, any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Indian Forest Act is deemed to be a private forest. By virtue of section 3 of the Maharashtra Forest Act, all private forests vest in the Government on and from the appointed date i.e. 30th August 1975.

5. Mr.Naik, learned counsel for the appellant submitted that notice under sub-section(3)of section 35 of the Indian Forest Act was never served on the appellant. Notice under sub-section (3) of section 35 of the Indian Forest Act was also not issued to the Inamdars from whom the appellant had purchased the suit land. Therefore, there is no question of vesting of the land in the Government.

6. In Chintamani Gajanan Velkar Versus State of Maharashtra reported in (2000) 3 SCC 143, the Supreme Court has held that issuance of a notice under section 35(3) is enough and it is not necessary that the notice must be served on the owner for vesting the

property in the Government. Following the said decision, a Division Bench of this Court in Feroz Shabbar Hussain Vs. State of Maharashtra & ors. reported in 2006(4) Mh.L.J. 388 has further held that even issuance of a notification under section 35(1) of the Indian Forest Act is not necessary for vesting of the forest land in the Government. In view of these decisions, submission of Mr.Naik that the land did not vest in the Government because notice u/s.35(3) of Indian Forest Act was not served on the appellant has no force.

7. Mr.Naik further submitted that there was no proof that the notice under sub-section 35(3) was ever issued to the owners. It is true that an office copy of the notice issued under section 35(3) is not placed on record. Learned AGP however submitted that the office copy of the notice is misplaced and presently not traceable. However, a register showing the names of the persons to whom notices were issued has been maintained by the office. The original register was brought in the court for inspection. The lands in respect of which notices under section 35(3) of the Indian Forest Act were issued are mentioned in the said register. The suit lands are shown at Sr.No.14

to 21 of the said register. Copy of the relevant page is placed on record at page 30 of the compilation. Thus, there is a prima facie evidence of issuance of notices under section 35(3) of the Indian Forest Act. Under section 114 of the Evidence Act, there is a presumption that all official acts have been properly done in regular course of business. Hence at this stage, the contention of Mr.Naik that notice under section 35(3) of the Indian Forest Act was not issued, cannot be accepted.

8. There is one more reason why I am not inclined to accept the contention of Mr.Naik that notice under section 35 was never issued to the owners. On 5th August 2004, the respondent made an application for restoration of the suit land under section 22 of the Maharashtra Forest Act. Section 22 says that if on an application by any owner of a private forest or suo moto the collector after holding the said enquiry is satisfied that the total area the owner has become less than 12 hectors on the appointed date on account of the acquisition of his forest land, the Collector shall restore the acquired land so that the total holding of the person on the appointed date does not exceed 12 hectares. By making an application

for restoration of the land under section 22 of the Maharashtra Forest Act, the appellant admitted that the suit land stood vested in the Government. He claimed restoration of the suit land on the assumption that the notice under section 35(3) of the Indian Forest Act was issued and the land stood vested in the Government under section 3 of the Maharashtra Forest Act. The respondent cannot blow hot and cold and at one stage apply for restoration of the land and at another stage claim that the land has not been vested in the Government.

9. The impugned order of the Asst. Conservative of Forest passed on 21st May 2005, has been challenged by the appellant in an appeal before the Divisional Revenue Commissioner (Appeal No.56 of 2004). In the said appeal, the Divisional Revenue Commissioner has already granted interim stay to the order of the Asstt. Conservative of Forest. The appellant cannot pursue two remedies simultaneously, one challenging the impugned order before the appellate authority under the Maharashtra Land Revenue Code and challenging the very order by filing of a suit. Furthermore, section 20 of the Maharashtra Forest Act bars a civil suit.

10. For these reasons, I am satisfied that the appellant had not made out a strong prima facie case for grant of interim injunction. The learned Judge was right in refusing the injunction. The appeal is accordingly dismissed summarily.

11. Learned counsel for the appellant prays for stay of this order. The order is not an executable order, but only an order dismissing an appeal. Hence, the prayer for stay is rejected.

(D.G. KARNIK, J)